



Lamoine Board of Selectmen

606 Douglas Hwy
Lamoine, ME 04605
(207) 667-2242
town@lamoine-me.gov

Minutes of March 3, 2011

Chair Jo Cooper called the meeting to order at 7:00 PM

Present were: Selectmen Gary McFarland, Richard Fennelly Jr., S. Josephine Cooper, Cynthia Donaldson; Administrative Assistant Stu Marckoon, Assessors Michael Jordan, Terry Towne, Jane Fowler; Appeals Board members Griff Fenton, Jim Crotteau, Planning Board Chair John Holt, and Conservation Commissioner Carol Korty. Selectman William Brann had informed the board ahead of time that he would not be able to attend.

Agenda Review – Stu suggested moving the Planning Board item on the addenda up higher.

Minutes of February 17, 2011 – Richard and Cynthia had a few minor changes to the draft minutes. Jo moved to approve the minutes with the changes. Gary 2nd. **Vote in favor was 4-0.**

Expenditure Warrant 17 – Selectmen signed warrant 17 for \$329,527.43. Stu reported \$315,000 of that was a transfer from checking to investments.

Cash & Budget Report – There were no questions about the printed report

Checking Account Reconciliation – Stu reported the checking account reconciled easily in February. Jo moved to sign the statement expressing satisfaction with the review of the reconciliation. Cynthia 2nd. **Vote in favor was 4-0, Selectmen signed the statement.**

Request of Appeals Board to use attorney – Appeals Board chairman Griff Fenton said the board has received an appeal from Doug Gott & Sons in regard to a denial by the Planning Board of a Site Plan Review permit and a gravel pit permit. He said the Appeals Board discussed at its last meeting that the appeal is different from ones in the past and requires guidance from someone who knows the law. Appeals Board member Jim Crotteau said he supported the request. He said the case will likely be based on a legal issue that involves the applicability of the comprehensive plan, and that it would be helpful to have someone who knows this area of the laws.

Jo said the Selectmen had a battle a few meetings ago over the Assessors requesting use of an attorney, and it would be helpful to have some idea of a cost estimate. She asked if this would be a one time consultation. Mr. Fenton said he hopes that might be the case, but the attorney might need to be in attendance at the hearing. He said the Appeals Board tries not to hire an attorney, but in this case, it's better to get it right the first time to avoid future costs. He said he doesn't know what the cost might be. Jo asked when the attorney would be needed. Mr. Fenton said the hearing on Gott is April 27, 2011. He said he would like to have the paper work to an attorney before the hearing and the attorney could advise the board, and possibly attend the meeting. He

said there would likely be conflicts of ordinances with law, which will require more information.

Richard asked if town attorney Tony Beardsley would be used. Mr. Fenton said probably not, as he had advised the Planning Board previously on this case. Stu said he spoke with Tony, and he might be a possibility, but would have to check with the bar's Ethics Commission. Jo asked if an estimate could be obtained before the next meeting. Mr. Fenton said he might be able to get an idea of how much time would be involved and the rate per hour and get a range of costs.

Jo said it sounds like a complex case. Mr. Crotteau said he doesn't expect a lot of factual disputes – the arguments will be mostly on the law. Mr. Fenton said he expects it will be one of the shorter hearings – all the matters are legal issues.

Gary said if the Selectmen could get the cost information it would be helpful. Cynthia said she favors providing the committees of the towns with the resources needed. Jo said if the Selectmen could get the cost information, it could make a decision. She said she doesn't feel comfortable approving the unknown.

Assessor Jane Fowler asked if the hearing ends the issue. Mr. Fenton said it does as far as he is concerned, but the case would either be remanded to the Planning Board or appealed to Superior Court. Mrs. Fowler said it has the potential for significant cost. Mr. Fenton said that's why it's important for the Appeals Board to get it right. He said one of the issues is a constitutional matter, and the Appeals Board cannot decide that question.

Stu asked if the direction from the Board of Selectmen is to get a cost estimate either from the town attorney or his backup. Jo said that was correct.

Planning Board Request re: expired gravel permit – Planning Board chair John Holt asked if the Selectmen had copies of his memo to them. Stu said it was set out with their materials for tonight's meeting earlier in the day.

Mr. Holt said John Goodwin is operating two pits without permits. He said the chronology of that is presented in the memo, and he felt it was important to notify the Selectmen, as that is the board charged with enforcement of the Gravel Ordinance. Jo said the first step would be to notify the alleged violating party. Mr. Holt said the Planning Board notified Mr. Goodwin in December that the permit had expired, and that it was improper to operate without a permit, and that they needed to submit an application. He said simply to make application is not a remedy; it has to be a completed application. Jo said it must be communicated that the pit owner is out of compliance. Mr. Holt said that was in the letter received by Mr. Goodwin on December 16, 2010.

Jo said the Selectmen would have to take some action. She asked if that would be a stop work order. She said some sort of date should be indicated. Mr. Holt said the Gravel Ordinance gives pit operators 60-days to remedy violations. He said the owner has made application but it is incomplete, and they have been slow to make completion.

He said if the Planning Board is to move forward, the earliest the renewal could be approved would be at the May meeting, due to the process outlined in the ordinance. He said if the pit is re-permitted, there will have been a 6-month period of operation without a permit. He said the Planning Board is not in the enforcement business.

Cynthia said she has no patience for this. She said there are many pit operators who do this just fine. Gary said Goodwin knows the rules. A short discussion followed on the time line. Richard asked if the Planning Board had any recommendation. Mr. Holt said they did not, that would be up to the Selectboard. Jo said when imposing a fine or punishment, the board needs to be sure the complaint has a clear start date.

Stu said the notice of violation required the pit owner to apply, but the Planning Board has not taken any final action on the application. Richard asked if the submission date was prior to expiration. Stu said it was after the expiration, and said the notice of violation said they needed to apply. Cynthia asked if the permit was acceptable. Mr. Holt said the board has to determine whether all the information asked for is complete – whether it's satisfactory is determined later on. He said there were several items missing in January, some in February and at last Tuesday's meeting, and the representative for Mr. Goodwin forgot about the meeting and didn't attend. He said the Planning Board said they would accept the applications as complete, though one item is still missing. He said the Planning Board would proceed from there with the process, but it is well beyond the 60-days called for by ordinance to remedy a violation. Richard said that just because an application is complete, it does not mean it is approved.

Mr. Holt said the Planning Board asked the Code Enforcement Officer to write a certified letter to Mr. Goodwin, which he did. He said the letter said the materials must be received two weeks before the meeting, and that was made the corrective action. He said the Planning Board did not review that letter. There was a brief discussion about the completeness of the application. Mr. Holt asked how the town wants to handle this sort of violation.

Cynthia again stated she had no patience with this. She said the pit owner did not do what he was asked to do, and the Planning Board has been more than gracious. She said application for a gravel permit is not a hopelessly complicated matter. Jo said the pit owner does not seem to be taking this seriously. Gary said it's not a difficult process, and suggested daily fines can be imposed to send a strong message. Stu said there are a lot of hoops to jump through. Cynthia asked if a stop work order could be issued. Stu said the Code Enforcement Officer could best answer that.

Jo said if it takes two months for the planning board to go through the process, you couldn't fine them if they've gotten the applications in. She said she doesn't know how to deal with this.

Carol Korty said she's heard what is going on at the Planning Board meetings. She said she feels he's being arrogant and grossly disrespectful to the town, because the town is an easy pushover. She said the fine could only be \$100-day, and if he were out of compliance for a month, that's \$3,000 and that's nothing. She said the pit owner

estimated he would make \$1.3 million dollars. She said the fine should be increased to \$1,000/day or a stop work order issued. She said he would continue to be arrogant because he's got nothing to lose. Richard said a number of people who work for the pit owner have a lot to lose.

Mr. Fenton said there is going to be a precedent set on how this is handled. Richard said he's not familiar with any ordinance language on how to respond to this sort of thing. He said that given the magnitude of gravel operations in the town, there should be some sort of administrative penalty to respond. Mr. Holt said there is something in the ordinance that speaks on how to handle it which involves being taken to court and charged with a misdemeanor. Richard said if that exists, a consent agreement could be arranged to avoid legal fees. Mr. Jordan said he's not sure how much Mr. Goodwin is aware of, as Engineering Dynamics is handling the application. Cynthia said Goodwin is still responsible. Mr. Jordan said Mr. Goodwin might not realize the application is being dragged on this long. A short discussion followed.

Mr. Holt suggested that a discussion between the Selectmen and Mr. Goodwin might be appropriate to find out where he stands. He said short of going to court, this might be a possible remedy. He said that conversation could discuss the permit's length. Jo said she would prefer to contact the attorney to look at the scenario and tell the board what options it has; then let Mr. Goodwin know the Selectmen have been approached by the Planning Board and considering various options; then proceed from there. Stu said he agrees that having an attorney would be appropriate. Discussion followed on stop work orders and precedents.

Jo said she would like to communicate the concerns with Mr. Goodwin after finding out what the options are. Richard said he suspects the attorney will give the options of a stop work order, or we can go to court, or we can reach a consent agreement. Cynthia said another option is to do nothing at all. A discussion followed on various options.

Stu asked what the town's ultimate goal was. Jo said a completed permit is one goal; the timeliness of application is a big concern, and the Selectmen don't want him to get away with it, and wants to prevent late applications in the future. Mr. Holt said the pit owners need to be notified of the process. He said some ordinance changes might be needed, and that the ordinance assumes that a permit renewal will be sought. He said he would like to make sure this doesn't happen again, and that a late renewal is penalized. Jo said the whole thing is frustrating. Mr. Holt said recent activity on code enforcement seems to penalize individuals, but not large corporations.

Jo said the town attorney should be consulted to advise the Selectmen on the next step. She said perhaps there should be a standard process to follow in the future. Cynthia said she's perplexed that the town has to go to court before somebody can be fined. Stu asked if the Planning Board has taken any action on the applications. A brief discussion followed on where things stand with the planning board. Mr. Holt said the corporation is operating in violation of the ordinance, and enforcement action is needed. He said the violation seems egregious. Jo said the Selectboard's response is that they are looking into this. Cynthia said the Board cannot let this drag on. Stu asked if it's the direction

from the Select Board for him to contact the town attorney, present a chronology, and ask for the options. Cynthia said yes, and that is wanted ASAP.

Shoreland Zoning Violation – Stu said he's communicated to the town attorney the desire of the Selectmen and has not heard anything back.

Citizen of the Year Proclamation – Selectmen signed the proclamation honoring the Citizen of the Year who will be honored at the annual town meeting. The plaque layout was also approved.

Solid Waste Data – There were no questions regarding the annual solid waste report to the State of Maine

Recycling Contract – Stu reported an offer has been received from Coastal Recycling but not yet from the City of Ellsworth. He said he would contact Ellsworth to try to nudge that along.

Skillings River – Shellfish Closure – Richard reported that he completed the letter to the Department of Marine Resources, but he's still waiting for a signature from a Hancock Selectman. He said there is a deadline for submission. Ms. Korty said that Jim Norris asked the Conservation Commission for assistance to find the potential pollution source. She said they found out that the goat farm is recycling manure and that might be the way to go for the two farms on Mud Creek Road. She said the Conservation Commission is glad to help, but unsure of what steps to take.

Richard explained the purpose of the letter was to prevent depuration diggers from coming in while the problem is investigated and fixed. He said that buys time to fix the problem. He said if agriculture is a source of the problem, it's probably not a code violation. He said the situation affects diggers and shorefront owners, and needs to get corrected, otherwise the problem becomes incremental and will shut down more areas. He said it's a difficult problem to correct.

Water Filter System – Stu reported he has written to the homeowner and to Norlens to go ahead with the filter installation as approved.

Cable TV- Stu reported the Cable TV Committee meets on Monday and the items on the Selectmen's agenda are on the CTV agenda for Monday. He explained briefly about the reconfiguration need and the potential personnel hiring thoughts. Richard asked if this all comes from the Cable TV fund. Stu said it would.

Policy/Job Descriptions – Selectmen opted to tackle this later – no action was taken on the latest drafts. Cynthia noted later in the meeting that at a future meeting she would like to discuss the questions she had and the responses/questions raised from that.

Conservation Commission – Stu reported two people indicated their interest in the Conservation Commission. Ms. Korty asked if either of the present alternates were

considered for the full member opening. Stu said neither had contacted him about doing so, but may not have known to do so. Jo, after making an un-seconded nomination, said an appointment would be made next meeting. Stu said he would contact the alternates. Selectmen asked to communicate thanks to the two applicants.

Bangor Hydro Request to operate on posted roads – Jo moved to approve the annual request from Bangor Hydro to perform maintenance on posted roads. Gary 2nd. **Vote in favor was 4-0. Jo signed the form.** A short discussion on posted roads followed.

Debit/Credit Cards - Stu reported that InforME, the company that does the rapid renewal and boat registration program, is offering a credit card acceptance system that charges the customer 2.5% in addition to the transaction and the town would get the full value of the sale. He said that is exactly the type of program he had in mind for accepting cards. Cynthia said customers need to clearly understand that an additional amount is being charged to their cards. Stu said a sign would be posted right at the counter, and the customer would be verbally told about the charge. Jo moved to authorize Stu to go ahead and implement the system. Richard 2nd. **Vote in favor was 4-0 (Donaldson said it was with reluctance).**

Mud Creek Road Paving – Stu reported the MDOT plans to pave Mud Creek Road next summer. There was a short discussion about the condition of the road and the need for a culvert between Bob-O-Link Land and Chickadee Lane.

Safety Works Follow Up – Stu reported the Fire Department has achieved nearly everything from the Safety Works Inspection list with the exception of fit-testing, which will be conducted on Sunday the 13th. He said he still needs to conduct fire extinguisher training with the transfer station manager.

Stale Checks – Cynthia moved to approve an order to return two uncashed checks to the general fund. Richard 2nd. **Vote in favor was 4-0, Selectmen signed the order.**

Hodgkins Scholarship – Stu reported that the application for the Hodgkins Scholarship has been posted on the town's website, and that more than \$20,000 is available to award this year.

RSU 24 Budget – Selectmen received an invitation to a pair of budget sessions from RSU 24 on either March 31 or April 7. Stu said if anyone is interested in attending, they should contact him to RSVP to the RSU office.

Public Sand Pile – Stu reported that plowing contractor Richard McMullen suggested placing a sand pile at the salt/sand building for the public to fill up a 5-gallon bucket if needed. He said other communities do that, and that Richard has been approached by many folks who needed a little sand for traction this winter. Mr. Jordan noted that Nankervis routinely let folks use small amounts of sand. After a brief discussion, Selectmen agreed it would be OK to pursue the idea.

Other – CEO-Fill In Clarification – Cynthia asked if any action was needed on a proposed clarification for which Code Enforcement Officer gets paid. Stu said he was waiting to hear from CEO Ford on the proposal, and had put the proposal in the packet for the Selectmen's information.

Ordinance Hearing – Stu asked if there were any comments about the proposed ordinance changes at the public hearing before the Planning Board. Mr. Holt said there were none received.

Next Meeting – Jo noted that the next meeting is the annual town meeting on March 15 & 16, followed by the organizational meeting on March 17, 2011.

There being no further business, the meeting adjourned at 8:32 PM

Respectfully submitted,

Stu Marckoon, Adm. Asst. To the Selectmen